



**BILLING CODE 3110-01**

**OFFICE OF MANAGEMENT AND BUDGET**

**2 CFR Part 180**

**OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)**

**AGENCY:** Office of Management and Budget.

**ACTION:** Interim final action.

**SUMMARY:** The Office of Management and Budget (OMB) is amending the OMB guidance to agencies on governmentwide nonprocurement debarment and suspension (nonprocurement) to implement a section of the National Defense Authorization Act for Fiscal Year 2017 (NDAA) that prohibits awards to persons or entities involved in activities that violate arms control treaties or agreements with the United States. The NDAA requires revision of these OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. To fully implement the NDAA requirement necessitates revision of OMB Guidelines to agencies on Governmentwide Debarment and Suspension (Nonprocurement).

**DATES:** Effective date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments due date: Interested parties should submit comments electronically to [www.regulations.gov](http://www.regulations.gov) on or before [INSERT DATE 60 DAYS AFTER THE DATE OF

**PUBLICATION IN THE FEDERAL REGISTER]** to be considered in the formation of the final guidance.

**ADDRESSES:** Comments on this interim action must be submitted electronically before the comment closing date to [www.regulations.gov](http://www.regulations.gov). In submitting comments, please search for recent submissions by OMB to find docket OMB-2018-0001. The public comments received by OMB will be a matter of public record and will be posted at [www.regulations.gov](http://www.regulations.gov). Accordingly, please do not include in your comments any confidential business information or information of a personal-privacy nature. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments notwithstanding the inclusion of the routine notice.

**FOR FURTHER INFORMATION CONTACT:** Gil Tran, OMB, Office of Federal Financial Management at 202-395-3052 or [Hai\\_M.\\_Tran@omb.eop.gov](mailto:Hai_M._Tran@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:**

**Background:**

The System for Award Management (SAM) Exclusions is a list of persons and entities ineligible for Federal awards. Currently, Federal awarding agencies are required to check the list before making Federal awards to determine whether the person or entity is excluded, debarred, suspended, or otherwise prohibited from receiving Federal awards.

If the person or entity is identified as prohibited from receiving Federal awards, Federal awarding agencies cannot make the award unless the Federal agency head or designee allows an exception consistent with existing law. This requirement flows down to Federal award recipients, who are required to check SAM Exclusions for all subawards and contracts equal to or exceeding \$25,000. However, these requirements do not currently apply to a limited number of Federal awards given to certain types of foreign entities. The purpose of this interim action is to amend OMB Guidelines to agencies on Governmentwide Debarment and Suspension (Nonprocurement) to extend these requirements of potential Federal awards to persons, entities, or organizations that have engaged in any activity that contributed to or is a significant factor in a country's non-compliance with its obligations under arms control, nonproliferation, or disarmament agreements or commitments with the United States.

Pursuant to 22 U.S.C. 2593e(a)(1), the Secretary of the Treasury is required to submit to the appropriate Congressional committees a report, consistent with the protection of intelligence sources and methods, identifying every person with respect to whom there is credible information indicating that the person is an individual who is a citizen, national, or permanent resident of, or an entity organized under the laws of, a noncompliant country as described in 22 U.S.C. 2593e(a)(2); and has engaged in any activity that contributed to or is a significant factor in the President's or the Secretary of State's determination that such country is noncompliant.

The Secretary of the Treasury also identifies any person or entity that has provided material support for such noncompliance to a person or entity engaged in the noncompliant activities. The Secretary of Treasury posts this information, as appropriate and consistent with the protection of intelligence sources and methods, as an exclusion record in the SAM database. If the person or entity is on the SAM Exclusions list, the person or entity may not receive Federal awards and awards may not be renewed or extended.

With respect to each person or entity identified by the Secretary of the Treasury as having provided material support, the NDAA calls for the imposition of certain measures. Specifically, section 1290(c)(1) requires that the head of any executive agency may not enter into, renew, or extend a contract for the procurement of goods or services with such person or entity. Furthermore, section 1290(c)(3) directs that the Federal Acquisition Regulation (FAR), the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards be revised accordingly to implement the NDAA requirement. The revisions to the FAR were published in the Federal Register on June 15, 2018 (83 FR 28145, FAR Case 2017-018). This action amends 2 CFR 180.215 to implement section 1290 of the NDAA.

### **Discussion and Analysis**

This action amends 2 CFR part 180 to ensure that entities who have engaged in activity that contributed to or is a significant factor in a country's non-compliance with its

obligations under arms control, nonproliferation or disarmament agreements or commitments with the United States are restricted from receiving non-procurement and procurement transactions. Currently, 2 CFR part 180 restricts Federal awards that are considered covered transactions to persons or entities that are listed in SAM Exclusions and these requirements flow down to all covered transactions, including: (1) All nonprocurement subawards; and (2) contracts that equal or exceed \$25,000. However, 2 CFR 180.215 provides specific exceptions from what are considered covered transactions, including awards to certain types of foreign entities. This action revises 2 CFR 180.215 to define “covered transactions” to include direct awards, regardless of tier or amount for non-procurement and procurement transaction, to exempt foreign persons, entities and organizations if such persons, entities, or organizations have engaged in any activity that contributed to or is a significant factor in a country’s non-compliance with its obligations under arms control, nonproliferation or disarmament agreements or commitments with the United States.

### **Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory

action and, therefore, was not subject to review under Section 6(b) of E.O. 12866. In addition, this action is not a major rule under 5 U.S.C. 804.

### **Executive Order 13771**

This action is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires that an agency provide a final regulatory flexibility analysis or certify that the rule will not have a significant economic impact on a substantial number of small entities. OMB does not expect this interim action to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This interim action implements the provisions of section 1290 of the NDAA and will not have a significant economic impact on a substantial number of small entities because it will affect only a small number of Federal awards that are currently excluded from the definition of covered transactions. Currently, the vast majority of Federal awards are subject to the 2 CFR part 180 provisions that apply to covered transactions.

### **Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to 2 CFR part 180 do not impose incremental recordkeeping or information collection requirements, or the

collection of information that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### **Determination to Issue Interim Action**

As this regulatory action involves a matter relating to Federal awards, it is not subject to the public procedure requirements of the informal rulemaking provisions of the Administrative Procedure Act. *See* 5 U.S.C. 553(a)(2). Nevertheless, OMB is voluntarily seeking comment to be considered in the formation of the final action.

### **List of subjects in 2 CFR Part 180**

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

Timothy F. Soltis,  
Deputy Controller.

For the reasons stated in the preamble, the Office of Management and Budget amends 2 CFR part 180, as set forth below:

### **PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

1. The authority citation for part 180 is revised to read as follows:

Authority: Pub. L. 109-282; 31 U.S.C. 6102, Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

2. In § 180. 215, add paragraph (h) to read as follows:

**§ 180. 215 Which nonprocurement transactions are not covered transactions?**

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(h) Notwithstanding paragraph (a) of this section, covered transactions must include non-procurement and procurement transactions involving entities engaged in activity that contributed to or is a significant factor in a country's non-compliance with its obligations under arms control, nonproliferation or disarmament agreements or commitments with the United States. Federal awarding agencies and primary tier non-procurement recipients must not award, renew, or extend a non-procurement transaction or procurement transaction, regardless of amount or tier, with any entity listed in the System for Award Management Exclusions List on the basis of involvement in activities that violate arms control, nonproliferation or disarmament agreements or commitments with the United States, pursuant to section 1290 of the National Defense Authorization Act for Fiscal Year 2017, unless the head of a Federal agency grants an exception pursuant to 2 CFR 180.135 with the concurrence of the OMB Director.

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